

E-235/C-91-681 ORDER REQUIRING REFUND AND COMPLIANCE FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Complaint
Against the City of Ely by Non-
Resident Customers

ISSUE DATE: August 21, 1992

DOCKET NO. E-235/C-91-681

ORDER REQUIRING REFUND AND
COMPLIANCE FILING

PROCEDURAL HISTORY

On August 26, 1991 thirty-five nonresident customers of Ely Municipal Utilities filed a complaint under Minn. Stat. § 216B.17, subd. 6 (1990) challenging the utility's right to charge them a \$5.00 monthly surcharge for street and sidewalk maintenance. They claimed the maintenance was not necessary for the provision of their utility service and should be funded from general City revenues.

The complaint came before the Commission on October 22, 1991. The City appeared and stated the surcharge was necessary to fund utility-related street and sidewalk maintenance. Complainants continued to challenge both the appropriateness and the amount of the surcharge.

On November 5, 1991, the Commission issued its ORDER INITIATING INVESTIGATION. In its Order, the Commission found that the complaint merited further investigation. The Commission stated that it did not have enough information at that point to determine whether or not the surcharge at issue is appropriate. Accordingly, the Commission directed the Department of Public Service (the Department) to investigate the merits of the complaint and submit a report and recommendation.

On April 21, 1992, the Department filed its report and recommendation.

On August 6, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission has jurisdiction over complaints by nonresident consumers of municipally owned gas and electric utilities pursuant to Minn. Stat. § 216B.17, subd. 6 (1990) which states:

The commission shall have the power to hear, determine and adjust complaints made against any municipality owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less.

The Ely Public Utilities Commission operates a municipally owned electric utility and is subject to the Commission's complaint jurisdiction when acting in that capacity.¹ The term "rates" as defined by Minn. Stat. § 216B.02, subd. 5 (1990) includes every charge demanded by any public utility for any service and, therefore applies to such items as the \$5 monthly surcharge assessed by the Ely Public Utilities Commission (EPUC) and challenged by the complainants herein. In addition, the complainants have submitted their complaint in numbers sufficient to satisfy the statutory requirement: 35 nonresident consumers. Finally, the complaint requests actions that the Commission has authority to perform, i.e. to review the surcharge in question for reasonableness and equity pursuant to Minn. Stat. § 216B.03 (1990) and overturn it if it is found improper. In short, the complainants have properly invoked the Commission's jurisdiction.

In considering the validity of any utility surcharge, a fundamental question is whether the surcharge bears a direct relationship to the cost of providing the utility service. In this case, the Commission finds that the monthly street and sidewalk assessment fails this fundamental test with regard to the provision of electric service and will prohibit its collection as specified in this Order.

Funds collected through this monthly assessment are used solely to repair streets and sidewalks that have been damaged in the course of installing and repairing underground water and sewer facilities. It is clear that the street and sidewalk repair funded by this surcharge will not be occasioned by the provision of electric service because all portions of EPUC's electric distribution system lie above grade. In these circumstances, a surcharge to repair streets and sidewalks manifestly lacks the requisite connection to the provision of electric service.

¹ The Ely Public Utilities Commission provides two other utility services, water and sewer, that are not subject to the Commission's complaint jurisdiction.

Accordingly, the street and sidewalk surcharge was unreasonable as applied to nonresident customers who received electric but no sewer or water service from the EPUC.² The assessment of non-residents who only received electric service was also inequitable in violation of Minn. Stat. § 216B.03 (1990) because it forced those customers to pay for repairs that they had no hand in causing. The assessment of these customers resulted in their subsidizing EPUC's other customers in violation of Minn. Stat. § 216B.03 (1990).

To rectify matters, the Commission will require EPUC to refund the surcharges collected from the nonresident customers who received electric but no sewer or water service. The Commission will vary the one-year limitation on refunds established by Minn. Rules, part 7820.3800 to authorize refund of all amounts improperly collected. In light of the relatively small amount of money at stake from the utility's point of view and the customer's clear right to have been free of such a surcharge in the first place, it would impose an excessive burden upon those customers to refund less than the full amount they were improperly surcharged. Granting the variance will promote the public interest by redressing a justified grievance, i.e. restoring the injured customers to the position they would have been in absent the improper surcharge. Granting the variance conflicts with no law or legal precedent.

Finally, to properly reimburse these customers for the funds illegally collected from them, the Commission will require the EPUC to pay interest on the surcharges as specified in the Ordering Paragraphs.

ORDER

1. The Ely Public Utilities Commission is hereby prohibited from assessing its Street and Sidewalk Surcharge against nonresident customers to whom it provides electric service only.

² The Commission will not invalidate the surcharge with respect to every nonresident customer that receives utility service from the EPUC. The question whether the surcharge may be justified in connection to EPUC's provision of water and sewer service is beyond the jurisdiction of the Commission. In the spirit of intergovernmental comity, the Commission will not undertake to review the validity of the surcharge as assessed against 1) the 11 nonresident customers who receive water and/or sewer service but no electricity from EPUC; and 2) the 18 nonresident customers who receive water and/or sewer service as well as electric service from EPUC.

2. Within 15 days of this Order, the Ely Public Utilities Commission shall refund the following amounts to nonresident customers to whom it provides electric service only:
 - a. all amounts collected from such customers as Street and Sidewalk Surcharges; and
 - b. interest on the collected surcharges calculated as follows: on the final day of each month that a collected surcharge amount remains unrefunded, the total surcharge amount collected and unrefunded as of that date shall be multiplied times the average prime interest rate for that month and divided by 12; the sum of the monthly interest calculations shall comprise the total interest on the collected surcharges.
3. Within 30 days after completing the refund required by Ordering Paragraph 2, the Ely Public Utilities Commission shall file a report with the Commission and the Minnesota Department of Public Service detailing its compliance with this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)